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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/439, 766 11/15/99 KRAMER

J A-65052-4/RM

PM92/0728

EXAMINER

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UNDERWOOD, D

ART UNIT	PAPER NUMBER
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3652

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DATE MAILED:

07/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.	Applicant(s)	
09/439766	Kramer	
Examiner	Group Art Unit	
Underwood	3652	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

*the application*

Responsive to communication(s) filed on 11/15/99.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 15-25 is/are pending in the application.

Of the above claim(s) NONE is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 15-25 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on 3/27/00 is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of References Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

Art Unit: 3652

**Detailed Action**

1. The preliminary amendment filed 11/15/99, i.e.. paper no. 2, has been entered in part. The insert before the first line has been entered. The preliminary amendment filed 1/19/00 i.e. paper no. 3, has not been entered. The amendment filed 3/27/00 i.e., paper no. 5, has been entered. This case contains claims 15-25 as submitted in the amendment filed 3/27/00.

2. The proposed drawing changes filed 3/27/00 have been approved.

3. The drawing is objected to under 37 CFR 1.83(a) as failing to show and label the tendon attached to the articulated link of the second assembly (claim 18) and the tendon attached to the supporting section of the second assembly (claim 20).

4. Claims 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3652

6. Claims 15-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "comprising a tendon, and supporting section, wherein" in line 1 should be deleted and a phrase similar to -- for applying -- should be inserted since the tendon and supporting sections are introduced in the body of the claim. Also "a portion" in line 6 should be -- one of said portions --.

Regarding claim 22, "a joint" in line 2 should be correlated with the joints in claim 15. Also the goniometer should be correlated with other claimed elements to define an operative device.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 15-19, 21, 23, 24 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Richter.

Note supports 39, 15 and pivoted links 13, 14.

Regarding claims 16, 18, note tendon 22 and its casing.

Regarding claim 17, note tendon 20.

Regarding claims 19, 21, 23 and 24, note tendon 21.

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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 15, 16, 18, 19, 21, 22, 23, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,059,506. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant case are broader renditions of the claims in the parent and would prevent practice of the patent claims if allowed.

10. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1112.

Underwood-Carmen

July 25, 2000

July 27, 2000

Donald W. Underwood 7/28/00  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER